



Respondent disputes the impairment provided for the injuries to the right upper extremity, arguing that the opinion of claimant's treating physician, E. Bruce Toby, M.D., a board certified orthopedic surgeon and hand surgery specialist, is more credible and should receive more weight than the opinion of Pedro A. Murati, M.D., board certified in physical medicine and rehabilitation. Additionally, respondent argues that claimant should not be entitled to any whole body impairment for the psychological trauma associated with the PTSD allegedly developed as a result of this injury.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

Claimant, a long-term employee of respondent, was working as a primary processing operator on July 18, 2001. On that date, while working on an industrial fan, claimant had his hand in the fan when another worker accidentally turned the fan on. Claimant's arm was caught in the fan, and he suffered a near amputation of his right thumb, with severe fractures of the radius and ulnar bones in his right arm. He also had lacerations of his right index finger and a laceration of his right palm. Claimant was transported to the emergency room and came under the care of E. Bruce Toby, M.D. Dr. Toby diagnosed a severe laceration of claimant's right index finger and near amputation of his thumb, a laceration of the palm and fractures of the radius and ulnar bones of the right forearm. Claimant underwent an open reduction internal fixation of the radius and ulna with plates attached, a repair of the flexor pollicis longus to the thumb, and repair to the lacerations on the index fingers and palm, with expiration of the neurovascular structures.

Dr. Toby continued treating claimant until October 2, 2002, at which time claimant continued with diffuse pain, particularly in the mid aspects of the forearm. Dr. Toby rated claimant at 6 percent impairment to the right upper extremity based upon the sensory loss associated with the thumb injury. Dr. Toby provided no impairment for the fractures to the ulna and the radius, testifying that there were no objective findings of impairment as a result of the bone fractures. At the time of his deposition, Dr. Toby was unable to recall how he measured claimant's sensory deficits or what those measurements were as he had retained no notes from his examination of claimant. He did clarify that the knuckle bone on claimant's thumb was not amputated, but instead the laceration was above the knuckle bone and that, at the time of the amputation, there was still blood flow going to the tip of thumb, resulting in no need for revascularization repair of the nerves or any repair to the arteries or veins.

Claimant has returned to work for respondent at a job which pays a wage comparable to that he was earning at the time of the injury. He, however, was not able to

return to his original job because the physical problems that he was having prevented him from climbing ladders.

Claimant also testified that he developed psychological problems as a result of this injury, being unable to go near the fan where he was injured. He currently works in the control room, writing down readings.

As a result of the psychological problems which developed, claimant was referred to Gregory Sisk, Ph.D., in St. Joseph, Missouri, who treated claimant on multiple occasions for approximately a year and a half. Claimant last saw Dr. Sisk on August 25, 2003. Apparently, claimant missed an appointment, and Dr. Sisk refused to reschedule after that time.

Claimant was referred to Pedro A. Murati, M.D., by his attorney for an examination on April 9, 2003. Dr. Murati diagnosed severe fractures to claimant's arm, as well as damage to his thumb and right hand. He assessed claimant a 35 percent impairment to the right upper extremity, with 20 percent of that impairment for a 54 percent loss of grip strength. He also found a 6 percent impairment as a result of the loss of range of motion of the thumb and a 20 percent impairment to the right hand for the complete hypesthesia of the thumb. This combines to a 35 percent impairment to the right upper extremity, which equates to a 21 percent impairment to the body as a whole. Dr. Murati assessed claimant a 10 percent impairment to the body as a whole for the psychological damage based upon the opinion of C. William Alexander, Ph.D., a clinical psychologist to whom claimant was referred on October 23, 2003.

Dr. Alexander, after interviewing claimant, performing psychological testing and reviewing Dr. Sisk's medical reports, agreed with the diagnosis of PTSD and pain disorder, both stemming from claimant's July 18, 2001 injury. He did not feel that claimant would need additional treatment, as he did not believe the additional treatment would produce any significant improvement. He assessed claimant a 10 percent impairment to the body as a whole for those psychological problems based upon the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). However, he acknowledged that while using the Fourth Edition, the impairment for those classifications also appeared in the Third Edition.

Claimant was referred to Patrick L. Hughes, M.D., a board certified psychiatrist, by respondent for an independent medical examination on December 22, 2003. Dr. Hughes also found claimant to have a 10 percent impairment to the body as a whole for the PTSD, but went onto state that if claimant were placed on a treatment regimen, including SSRI<sup>1</sup>

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<sup>1</sup> Selective serotonin reuptake inhibitor.

medications, he opined that claimant had a better than 90 percent chance of being completely cured. He went on to state that while he could not guarantee a cure with the serotonin regimen or medication treatments, he felt that claimant had at least a 95 percent probability that he would be symptom free after the treatments. Dr. Alexander opined that some PTSD patients are responsive to medications and some are not.

The medication treatment regime recommended by Dr. Hughes was not offered to claimant by respondent.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.<sup>3</sup>

Claimant argues entitlement to a functional impairment based upon the rating of Dr. Murati, while respondent argues Dr. Murati's impairment is highly inflated and a more accurate opinion is that of Dr. Toby. The Board finds neither doctor to be fully satisfactory in the opinions assessed. Dr. Murati awarded a 20 percent impairment to the right hand based upon a complete hypesthesia of the thumb. As noted in the testimony of Dr. Toby and the testimony of claimant, the thumb did not suffer complete hypesthesia, with the near amputation not going through the joint, but being above the joint, closer to the tip of the thumb. Dr. Toby, on the other hand, provided no impairment for the fractures to claimant's right upper extremity nor any impairment for any loss of grip strength which claimant appears to have suffered. The Board, therefore, finds that claimant's true functional impairment is somewhere between the 35 percent impairment of Dr. Murati and the 6 percent impairment of Dr. Toby. The ALJ determined, based upon the record, that claimant had a 25 percent impairment to the right upper extremity, which equates to a 15 percent impairment to the whole person. The Board affirms that finding.

In addition to that finding, the Board affirms the finding claimant has a 10 percent impairment to the body as a whole for the psychological injuries suffered as a result of claimant's traumatic accident. The record is uncontradicted that claimant developed PTSD stemming from this injury. Dr. Sisk initially diagnosed it, with both Dr. Alexander and

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<sup>2</sup> K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

<sup>3</sup> K.S.A. 44-510e(a).

Dr. Hughes confirming that diagnosis. Additionally, both Dr. Hughes and Dr. Alexander assessed claimant a 10 percent impairment to the body as a whole.

Disabilities resulting from psychological injuries are compensable under the Workers Compensation Act when the condition is directly traceable to the compensable physical injury.<sup>4</sup>

The evidence is uncontradicted that claimant's PTSD is directly traceable to the injuries of July 18, 2001. The primary dispute associated with this finding is whether claimant should be denied any permanency as a result of the PTSD based upon Dr. Hughes' testimony that, with the appropriate medication regimen, claimant would result in a full remission of the PTSD. The Board first acknowledges that Dr. Hughes did not guarantee a cure would occur. His opinion was more in the 90 to 95 percent range, with some, although, in his opinion, slim, possibility of a less than complete remission. Dr. Alexander, on the other hand, testified that there is no guaranteed cure for PTSD, even with use of the medications recommended by Dr. Hughes. Finally, the Board notes that this incredibly beneficial treatment regimen, which according to Dr. Hughes may come close to being a cure-all for PTSD, was not offered by respondent to claimant. It would have been in respondent's best interest, if this cure is such a miracle, to have offered it to claimant sometime during the litigation of this claim.

The Board finds that claimant has a 10 percent impairment to the body as a whole for the psychological trauma resulting from the July 18, 2001 injury, which, when combined with the 15 percent whole person impairment for the physical injuries, results in a 24 percent whole person disability.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated May 25, 2004, should be, and is hereby, affirmed in all regards.

**IT IS SO ORDERED.**

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<sup>4</sup> *Rund v. Cessna Aircraft Co.*, 213 Kan. 812, 518 P.2d 518 (1974).

Dated this \_\_\_\_ day of November 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant  
Tracy M. Vetter, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director